

## **REMARKS**

### **Remarks/Arguments**

Claims 1-5 were originally pending in the application. Claim 1 has been amended. Claim 3 has been canceled. Claims 1-2 and 4-5 are now pending. No new matter has been added. Reexamination and reconsideration of the claims is respectfully requested.

### **Double Patenting Rejection of Claims 1 and 3**

Claims 1 and 3 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 26 of USP No. 6,391,026 (Hung). Claim 3 has been canceled thus rendering the Examiner's rejection of Claim 3 moot. Regarding the rejection of Claim 1, the Applicant's disagree with the Examiner's assertion that Claim 26 of Hung recites the same method comprising treating a breast by vibrational energy. First, Claim 1 does not describe a method of "treating" a breast duct. Claim 1 of the present invention, as amended, recites a method for increasing a retrievable cell amount in a breast duct by applying vibration internally to a breast duct sufficient to induce cell sloughing within the breast duct and collecting the sloughed cells from the breast duct wherein applying vibration to the breast duct increases the retrievable amount of cells collected from the breast duct. The method described in Claim 26 of Hung describes the transfer of energy to an agent in a breast duct for the treatment of cells within the breast duct. There is no teaching or suggestion in Hung that the energy is applied directly to a breast duct, nor is there any suggestion or teaching that the energy applied to a breast duct is sufficient to induce cell sloughing within the breast duct, nor is there any teaching or suggestion that the energy increases the retrievable amount of cells collected from the breast

duct as required by Claim 1. Thus, the method of Claim 1 is patentably distinct from Claim 26 of Hung because Hung does not teach or suggest a method for increasing a retrievable cell amount in a breast duct by the application of vibration internally to a breast duct sufficient to slough off cells

The Applicants respectfully requests reconsideration and withdrawal of the obviousness-type double patenting of Claim 1.

**Rejection of Claims 1-5 Under 35 U.S.C. §103(a), Should be Withdrawn**

Claims 1-5 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,413,228 ("Hung") in view of U.S. Patent No. 4,740,196 ("Powell"), U.S. Patent No. 6,054,314 ("Kim"), and U.S. Patent No. 6,221,622 ("Love").

Claim 3 has been canceled thus rendering the Examiner's rejection of Claim 3 moot.

Claim 1 has been amended to include the limitation of applying vibrational energy internally to a breast duct. Neither Hung, nor Powell nor Kim nor Love, either alone or together, teach or suggest method for increasing a retrievable cell amount in a breast duct comprising the steps of applying vibration internally to a breast duct sufficient to induce cell sloughing within the breast duct and collecting the sloughed cells from the breast duct wherein applying vibration to the breast duct increases the retrievable amount of cells collected from the breast duct.

The Applicants respectfully requests reconsideration and withdrawal of the present rejected under 35 U.S.C. §103(a) of Claim 1 and all the claims which depend therefrom.

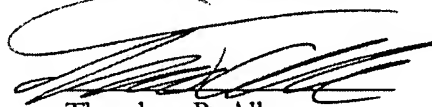
Inventor: Hung  
Application No. 10/825,752  
Filed: 04/16/04  
Page 1 of 5

**Conclusion**

It is believed that no fee is required for this submission. If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit our Deposit Account No. 502855, accordingly. If any questions or issues remain, the resolution of which the Examiner feels would be advanced by a conference with Applicant, the Examiner is invited to contact Applicant's attorney at the number noted below.

Customer No. 38732

Respectfully submitted,



Theodore R. Allen  
Registration No. 41,578  
Tel: 508-263-8490  
**Cytoc Corporation**  
250 Campus Drive  
Marlborough, MA 01752  
Tel (508) 263-8490  
Fax (508) 263-2959